

SURFACE TRANSPORTATION BOARD

DECISION

Docket No. FD 35981

FINCH PAPER LLC—PETITION FOR DECLARATORY ORDER

Decided: August 15, 2016

By petition filed on December 7, 2015, Finch Paper LLC (Finch Paper) seeks a declaratory order that certain practices and actions by Delaware and Hudson Railroad d/b/a CP Rail (CP Rail) relating to CP Rail's assessment of demurrage charges against Finch Paper are unreasonable practices in violation 49 U.S.C. §§ 10702 and 10746. By a decision served on February 11, 2016, the Board instituted a declaratory order proceeding and established a procedural schedule. In a decision served on May 11, 2016, the Board granted Finch Paper's April 5, 2016 motion for protective order. In a decision served on May 13, 2016, the Board granted the parties' May 6, 2016 joint motion to modify the procedural schedule and to extend the end of discovery to July 25, 2016.

After engaging in discovery, on July 1, 2016, Finch Paper filed a motion to compel discovery responses from CP. On July 21, 2016, CP replied in opposition to Finch Paper's motion.¹ In its Reply, CP alleges that Finch's motion to compel is untimely, citing 49 C.F.R. § 1114.31, which provides that a motion to compel should be filed within 10 days of the expiration of the period allowed for the submission of answers to interrogatories.

CP responded to Finch's first round of discovery that is the subject of this motion on March 9, 2016, and the second round on April 26, 2016. The parties continued to discuss the adequacy of discovery responses through May, and, according to Finch, CP continued to produce responsive documents (though CP claims those documents were not responsive to the disputed requests) as late as June 30, 2016. Consistent with the regulation, the Board prefers prompt filing of motions to compel. Here, however, given that discovery was ongoing through the period, and resolution of the discovery dispute should not unduly delay the proceeding, we will accept Finch's motion to compel.

The Board has signed a Memorandum of Understanding with the Federal Energy Regulatory Commission (FERC) to employ the services of FERC administrative law judges (ALJs) on a case-by-case basis to perform discrete, Board-assigned functions such as

¹ Finch filed a letter-response to CP's Reply on August 3, 2016. CP filed a letter in response to Finch's August 3, 1996 filing on August 8, 2016. Under 49 C.F.R. § 1104.13(c), a reply to a reply is not permitted. However, in the interest of compiling a more complete record, we will accept Finch's surreply and CP's August 8, 2016 response.

adjudicating discovery disputes between parties in cases pending before the Board. The Board hereby assigns and authorizes Administrative Law Judge H. Peter Young to entertain and rule upon pending discovery matters and to resolve all future disputes concerning discovery in this proceeding. The parties are directed to send copies of all their pending and future discovery-related filings in this proceeding to Judge Young at the Federal Energy Regulatory Commission, Office of Administrative Law Judges, 888 First Street, N.E., Washington, DC 20426.

It is ordered:

1. The motion to compel is accepted.
2. This proceeding is assigned to Administrative Law Judge H. Peter Young for handling of all discovery matters and resolution of all discovery disputes.
3. Each party in this proceeding must send a copy of its filings to Judge Young at the Federal Energy Regulatory Commission, Office of Administrative Law Judges, 888 First Street, N.E., Washington, DC 20426.
4. Judge Young will be added to the service list in this proceeding, and a copy of this decision will be served upon him.
5. A copy of this decision will be served on this United States Office of Personnel Management (OPM), at Human Resources Solutions, ALJ Program Office, 1900 E Street NW, Room 2458, Washington, DC 20414-9400. Judge Young shall send a copy of the notice or order that constitutes the final disposition of his assignment of this case to OPM at the above address.
6. This decision is effective on its service date.

By the Board, Rachel D. Campbell, Director, Office of Proceedings.